

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1191 of 1999

in

SPECIAL CIVIL APPLICATION No 221 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHANKAR VISHNUBHAI SINDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Appellant

MR JOSHI, ASSTT.GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 08/10/1999

ORAL JUDGEMENT

Per Thakker, Actg. C.J.:

This appeal is filed against dismissal of Special Civil Application No. 221 of 1999 by the learned Single Judge on August 3, 1999.

Appellant was the original petitioner. By an order, dated December 8, 1998, he was detained by the Commissioner of Police, Baroda city, Baroda ("detaining authority").

In exercise of powers under Section 3 of the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act"), the detaining authority was satisfied with respect to the appellant that with a view to preventing him from acting in a manner prejudicial to maintenance of public order, it was necessary to detain him and accordingly, an order of detention was passed.

On the same day, grounds of detention were supplied to him. It was alleged in the grounds of detention that the detenu was a "dangerous person" within the meaning of Section 2 (c) of the Act and his activities were prejudicial to maintenance of public order. Four criminal cases were registered against him in 1998. All the cases were pending for trial before regular courts. In three of those cases, a sword was alleged to have been used for commission of crimes. Over and above criminal cases, three witnesses have given statements relating to nefarious activities of the detenu which had adverse effect on public order.

Only one ground was advanced before the learned Single Judge at the time of hearing. It was contended that though statements of three witnesses were recorded by police authorities, only two were verified personally by the detaining authority. The third statement which was a statement of witness No.2 was neither verified by the detaining authority nor by any other officer. The contention was that in view of the fact that statement of witness No.2 was not verified by the detaining authority, subjective satisfaction was vitiated and hence, detention order was liable to be quashed.

In this connection, reliance was placed on certain decisions which were cited before the learned Single Judge. Learned Single Judge observed that in one of such cases, viz. in Khanusingh Dhulsing Rathod vs. State of Gujarat (Special civil application No. 7655 of 1998 decided on July 22, 1999), a statement of one witness recorded by the police officer was not verified by the detaining authority. It was, therefore, held that

subjective satisfaction arrived at by detaining authority was vitiated and the order was liable to be quashed. The said decision was, however, distinguished by the learned Single Judge on the ground that in the instant case, subjective satisfaction was based on more than one ground and the case would fall under Section 6 which enacts that even if one or some of the grounds is/ are vague, non-existent, unrelated or not connected, the subjective satisfaction cannot be said to be vitiated and the order cannot be quashed. The learned Single Judge, in this connection, placed reliance on a decision in another case viz. in Ganesh Durgaprasad vs. Commissioner of Police (Special Civil application No. 7501 of 1998 decided on July 19, 1999).

Learned counsel for the appellant contended that the question is not whether one of the grounds was non-existent but as to how subjective satisfaction of the detaining authority was arrived at. If subjective satisfaction was formed on the basis of three statements and, in fact they were not verified and yet, the detaining authority passed an order and states that the statements were verified by him, the subjective satisfaction would be vitiated. It has nothing to do with relevance or irrelevance or existence or non-existence of one or more grounds. In absence of real subjective satisfaction, the order falls on the ground as it goes to the root of the matter.

In this connection, our attention was invited by the learned counsel to the facts mentioned in para 3 of the grounds of detention in which, it was stated that three statements have been recorded disclosing anti-social activities of the detenu. It was then stated that the detaining authority has personally verified all statements of those witnesses. In the immediate next sentence, however, it was stated that two witnesses were personally called and statements were verified by the detaining authority. Contention of the learned counsel for the appellant was that so far as two witnesses were concerned, the matter is beyond any pale of controversy inasmuch as the detaining authority has stated that he had personally verified them. But the controversy is related to verification of statement of third person, viz. witness No.2. If he is not personally called and his statement was not verified by the detaining authority, it cannot be said that statement of such witness can be said to have been verified personally by the detaining authority which was stated in the previous sentence of the grounds of detention. Subjective satisfaction was, thus, vitiated.

Attention of the Court was also invited to the affidavit in reply filed by the detaining authority. In para 5, the detaining authority has stated as under:

" I have carefully examined and considered all those materials and also personally verified the genuineness and correctness of the statements of witnesses in the unregistered offences."

In para 7 also, the detaining authority has stated thus:

" With reference to paras 7,8,10, 11,12 and 14 of the petition, I say that as mentioned hereinbefore, after carefully examining and considering the materials placed before me and on personally verifying the genuineness and correctness of the statements of witnesses in the unregistered offences and after satisfying myself that the fear expressed by them is found to be quite proper, genuine and reasonable and after applying my mind to the facts of the case, as I was subjectively satisfied that if the names, addresses and other particulars of the witnesses are disclosed to the detenu, their lives and properties will be in danger, the privilege u/s 9 (2) of the PASA Act is claimed'

In the above two paras, the detaining authority has stated that on carefully examining and considering the materials placed before him, including the papers pertaining to criminal cases and statements of witnesses, and after application of mind, he was fully and subjectively satisfied that the detenu was a "dangerous person". Thus, he has formed subjective satisfaction on the basis of materials and statements in their entirety. Since the above statement was not considered nor he has stated that on each and every ground, order could have been passed which can be said to be legal and valid under Section 6 of the Act, in our opinion, the ratio laid down by the Supreme Court in Dharamdas vs. Commissioner of Police and another, AIR 1989 SC 1182 would apply wherein the Supreme Court has held that even if detaining authority impliedly states that each activity of the detenu was taken into account and the detention was ordered, the subjective satisfaction was vitiated.

In our opinion, in the instant case, since the third statement was not verified, the subjective satisfaction was vitiated and the order deserves to be quashed and set aside.

For the foregoing reasons, LPA deserves to be allowed. The order of learned Single Judge deserves to be set aside and is accordingly set aside. Order of detention is quashed and set aside and the detenu is ordered to be released forthwith unless his presence is required for any other offence. No costs. Direct service permitted.

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parekh